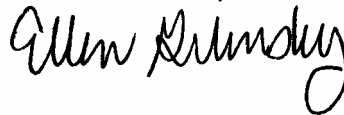


**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY PROGRAMS
ELLEN GILINSKY, Ph.D., DIRECTOR**

Subject: Guidance Memo No. 02-2010, Amendment No. 1
Water Compliance Auditing Manual Revisions - Section I "Spills" and Appendix 1
"Point Assessment Criteria"

To: Regional Directors

From: Ellen Gilinsky, Ph.D., Director



Date: March 25, 2008

Copies: Deputy Regional Directors, Regional Compliance Managers, James Golden, Rick Weeks, OWPCA staff

Summary:

The purpose of this guidance is to revise the Water Compliance Auditing Manual to include updated compliance auditing procedures and the point assessment criteria regarding spills. Attached are the revised pages which replace Section I and Appendix 1 of the Water Compliance Auditing Manual originally transmitted through Guidance Memorandum No. 02-2010. Specifically, Section I Spills has been expanded to address spills at permitted facilities and other spills. A Notice of Violation is warranted when a significant spill (e.g. a spill of oil in an amount equal to or greater than 4,000 gallons from a tanker) occurs. The revised Appendix 1 Point Assessment Criteria now assigns points to significant spills.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <http://www.deq.virginia.gov>.

Contact information:

Please contact Lily Choi, Office of Water Permits and Compliance Assistance, at (804) 698-4054 or ychoi@deq.virginia.gov with any questions regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

I. SPILLS

Spills at Permitted Facilities

- a. Spills or unauthorized discharges at permitted facilities are addressed in the following VPDES permit special conditions (boilerplate). Failure to comply with these conditions is considered a permit violation. A Notice of Violation is warranted when such spills or discharges cause adverse environmental impacts or present an imminent and substantial danger to the environment, or when there is a failure to report of any spills.

Part II. F. Unauthorized Discharges.

Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

Part II. G. Reports of Unauthorized Discharges

Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the Department under the immediate reporting requirements of other regulations are exempted from this requirement.

- b. CA receives documentation to review (i.e. site inspection memo, chronology of events, etc.). CA will make determination of noncompliance based on the information provided by permittee, and verified by DEQ permit, inspection, and enforcement staff. Before notifying permittee of potential violations, the CA needs to verify the basis upon which the potential violation is based.
- c. Points should be assessed by the CA based on the Point Assessment Criteria (See Appendix 1) under Other Violations.
- d. CA should enter any additional assessed potential violations/points into CEDS (i.e. inspection problems). All data is to be entered no later than the 24th of each month, and OIS will generate the potential violation points assessment on or about the 25th of each month.

Other Spills

- a. Spills or discharges of oil are addressed in Article 11 of the State Water Control Law. As indicated below in Section 62.1-44.34:18(A) of the Code, any spill of oil to state waters, lands, or storm drains is prohibited. Section 62.1-44.34:19(A) specifies the reporting requirements of these spills. A Notice of Violation is warranted when any spill results in environmental damage or loss of beneficial uses of state waters, or for any spill that is deemed significant, provided there is a clear responsible person. An example of a significant spill is a spill of oil in an amount equal to or greater than 4,000 gallons from a tanker. Failure to report of any spills also warrants a Notice of Violation except in cases where spills are in amounts less than 25 gallons and the clean-up and recordkeeping requirements are met.

Section 62.1-44.34:18(A) The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Section 62.1-44.34:19(A) Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, lands, or storm drain systems, or from

which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the discharge, notify the Board, the director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs and any other political subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of such discharge. Notice will be deemed to have been given under this section for any discharge of oil to state lands in amounts less than twenty-five gallons if the recordkeeping requirements of subsection C of § 62.1-44.34:19.2 have been met and the oil has been cleaned up in accordance with the requirements of this article.

- b. CA receives documentation to review (i.e. site inspection memo, 5-day letter, etc.). CA will make determination of noncompliance based on the information provided by the responsible person, and verified by DEQ permit, inspection, and enforcement staff. Before notifying the responsible person of potential violations, the CA needs to verify the basis upon which the potential violation is based.
- c. Points should be assessed by the CA based on the Point Assessment Criteria (See Appendix 1) under Petroleum Statute Violations – Oil Discharge Violations.

Appendix 1

POINT ASSESSMENT CRITERIA

Points assessed using these Point Assessment Criteria are used as a management-ranking tool to determine the best use of costly resources. Points are assigned when there is evidence that a violation has occurred, but the assignment of points and/or issuance of Warning Letters (WLs) (issued between cumulative, rounded point assessments of 1 and 3) or Notices of Violation (NOVs) (issued when point assessment reaches 4 cumulative, rounded points) are neither agency determinations (i.e., case decisions) nor adjudications. The purpose of the WL and the NOV is to advise that the Board may consider taking or seeking action, and that the facts therein could provide a basis for civil proceedings under Code 62.1-44.15(8), 62.1-44.23, 62.1-44.32(a), 62.1-44.34:20 and 10.1-1186(10), or others. Further evaluations are made to determine if and when a violation has occurred and that an enforcement action should be initiated.

<i>VIOLATION DESCRIPTION</i>	<i>POINTS ASSESSED</i>
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1) PERMIT VIOLATIONS

a) VPDES (including General Permits)

i) Effluent Limits

(1) TOXIC Parameters (Except Cl₂ and ammonia)

(a) Value equal or greater than 1.2 x Limit

Major.....	2
Minor	1

(b) Value less than 1.2 x Limit

Major.....	.5, .5, 1, 2
Minor .....	.2, .2, .5, 1

(c) WET..... 2

(2) NONTOXIC Parameters (including ammonia)

(a) Value equal or greater than 1.4 x Limit

Major.....	2
Minor	1

(b) Value less than 1.4 x Limit

Major.....	.5, .5, 1, 2
Minor .....	.2, .2, .5, 1

(3) Dissolved Oxygen, pH, Temperature, All Exceptions, Except Cl₂ (Major and minor)

(a) Value less or equal to 0.8 x minimum limit .....	.5, .5, 1, 2
(b) Value greater or equal to 1.2 x maximum limit.....	.5, .5, 1, 2
(c) Value less than 1.2 x maximum limit.....	.2, .2, .5, 1
(d) Value greater than 0.8 x minimum limit .....	.2, .2, .5, 1

(4) Chlorine

(a) Cl₂-Inst. Resid. Tech. Max and Inst. Min. Tech Limit (Parameters 166 and 213)

Major.....	1
Minor.....	.5

(b) All Other Cl₂ Including Exceptions (Major & Minor)

(i) Value less than or equal to 0.8 x minimum limit.....	.5, .5, 1, 2
(ii) Value greater or equal to 1.2 x maximum limit .....	.5, .5, 1, 2
(iii) Value less than 1.2 x maximum limit .....	.2, .2, .5, 1
(iv) Value greater than 0.8 x minimum limit .....	.2, .2, .5, 1

(5) Quarterly Reporting	
Major.....	1, 1, 2
Minor	1
ii) Pretreatment Violations	
Major	1, 1, 2
Minor.....	1
iii) Toxics Monitoring Program (Major and minor)	
(1) Failure to report under TMP/TRE	1, 1, 2
(2) Inadequate reporting under TMP/TRE, 1st submittal	1, 1, 2
(3) Inadequate reporting under TMP/TRE, subsequent submittals	1, 1, 2
iv) Unsatisfactory Inspection (Major and minor)	
(1) Overall unsatisfactory rating .....	.5, 1, 1, 2
(2) Overall unsatisfactory rating with evidence of falsification	4
v) Bypasses and Overflows (through permanent outfalls, points assessed per discharge, per day) (Major and minor)	
(1) Unreported.....	2
(2) Reported.....	.2, .2, .5, 1
b) VPDES and VPA	
i) Compliance schedules/due dates	
Major	1, 1, 2
Minor.....	1, 1, 2
ii) Late DMR/monitoring report (Major and minor) (Received after 10th of month, but not if postmarked by U. S. Post Office by 10th of month or documented received on 10th of month by commercial courier for delivery).....	.5, 1
iii) No DMR/monitoring report (Not received in month due) and deficient DMR/monitoring report (Omissions or errors so great as to prohibit a determination of compliance or 25 percent of values missing)	
Major	2
Minor.....	1
iv) Incomplete DMR (Normally less than 25 per cent of required parameter values missing) (Maximum points per DMR/monitoring report)	1
v) Improper DMR/monitoring report (Major and minor) (.2 total points per DMR/monitoring report to be assessed regardless of improper items) .....	.2
<i>Examples of Improper DMR/Monitoring Report Violations:</i>	
• No signature, no date, or no telephone number.	
• Number(s) and/or decimal point illegible.	
• Typographical or data entry error.	
• DMR submitted on outdated form.	
• Monitoring period not entered.	
• Sample type or sample frequency not complete or incorrect.	
• Letter of Explanation for violations not received.	
• Letter of Explanation for violations not adequate.	
vi) Application Process Violations (Major/minor/no permit)	
(1) Failure to (Re)Apply in Timely Manner.....	1, 1, 2
(2) Improper or incomplete application/reapplication.....	1, 1, 2
(3) Construction/modification of facilities without application (New or existing)	1, 1, 2
vii) Minor violations (Other than any of above)	
(1) Violation without adverse environmental impact .....	.5
(2) Failure to Correct Minor No-Impact Violation	1

(Examples: failure to submit O/M manual; failure to operate in accordance with O/M manual; violation of CTO condition)

c) VPA and Land Application	
i) Adverse environmental impact, or presenting an imminent and substantial danger	4
ii) Violation which causes discharge to state waters.....	1, 3
iii) Violation With No Discharge to State Waters .....	.5
iv) Failure to submit complete, original application	1, 1, 2
v) Application Process Violations	
(1) Failure to (Re)Apply in Timely Manner.....	1, 1, 2
(2) Improper or incomplete application/reapplication.....	1, 1, 2
(3) Construction/modification of facilities without application (New or existing)	1, 1, 2
d) Virginia Water Protection Permit Program (VWPP)	
i) Any violation causing major adverse environmental impact, including but not limited to fish kills or loss of other beneficial uses	4
ii) Improper or incomplete application	1, 1, 2
iii) Unpermitted activity, without major adverse environmental impact	2
iv) Noncompliance with water protection permit without major adverse environmental impact ..	2
v) All other violations.....	1, 1, 2
e) Groundwater Withdrawal Permit Violations	
i) Violation of annual withdrawal limit	2
ii) Violation of monthly withdrawal limit.....	1
iii) Withdrawal without permit or certificate	1
iv) Violation of permit or certificate conditions	1
v) Failure to comply with/correct any standard or special conditions other than limits	1
vi) Failure to mitigate adverse impacts of withdrawal as required by mitigation plan.....	4
2) ENFORCEMENT ACTION VIOLATIONS	
a) Judicial actions, all violations (Major and minor).....	4
b) Administrative actions	
i) Special Orders	
(1) Failure to pay civil charge in accordance with consent order (major and minor)	4
(2) Compliance schedules/due dates (except routine progress reports)	
(a) Majors.....	2
(b) Minors	1, 1, 2
(3) Progress reports (Not including study, sample data submittal) (Major and minor) .....	.1
(4) Effluent limits less stringent than permit	
(a) Major	4
(b) Minor.....	2
(5) Effluent limits equal to or more stringent than permit (same as points for permit violations)	
3) PETROLEUM STATUTE VIOLATIONS	
a) Underground oil storage tank (Article 9: UST and LUST) program violations	
i) No adverse environmental impact.....	.5, .5, 1
ii) Potential adverse environmental impact.....	1
iii) Adverse environmental impact or presenting an imminent and substantial danger	4
iv) Failure to report a release or suspected release	4
b) Aboveground 011 storage tank (Article 11: AST and LAST) violations	
i) Failure to submit Contingency Plan, or operation without approved Contingency Plan	1
ii) Failure to respond in 30 days after violator is notified by OSRR of inadequate Contingency	

Plan (1st point on 1st day late)	1, 1, 2
iii) Failure to demonstrate financial responsibility	1, 1, 2
iv) Failure to maintain on-site facility records	1, 1, 2
v) Failure to operate in accordance with approved Contingency Plan	1, 1, 2
vi) Reportable oil spill with no approved Contingency Plan, or inadequate response to oil spill .	4
vii) Failure to remediate	2, 2
c) Tank Vessels (Article 11)	
i) All violations	4
d) Oil Discharge Violations (Article 11)	
i) Discharge or Release of Oil Resulting in Environmental Damage or Loss of Beneficial Uses (If there is a clear responsible person).....	4
ii) Significant Spills (e.g. spills of oil in an amount equal to or greater than 4,000 gallons from a tanker)	4
iii) Failure to immediately report such discharges of oil that reach, or that may reasonably be expected to reach state waters, state lands, or storm drains	4
4) OTHER VIOLATIONS	
a) Spills into state waters and discharge to state waters not authorized by permit	
i) Adverse environmental impact, or presenting an imminent and substantial danger	4
ii) All other spills	
(1) Not Reported.....	4
(2) Reported.....	1
b) Refusal to reimburse for collectible cost recovery.....	2, 2
c) Violations of regulations and laws not stated above.....	Case by Case
5) AGGRAVATING FACTORS (not withstanding the above, any violation with following characteristics)	
a) Adverse environmental impact, loss of beneficial use, or presenting an imminent and substantial danger	4
b) Potential for adverse impact or loss of beneficial use	2
c) Violations resulting in exceedences of water quality standards violations.....	2
d) Suspected falsification	4
e) Suspected willful violation	4
f) Violation due to clear indifference.....	4
g) Any violation when the owner or operator is insolvent or bankrupt; where the facility is, or is about to be, abandoned; or when ownership of the facility is or is about to be transferred.....	4
h) Site access violations	
i) Failure to provide reasonable access otherwise required by statute or permit to any facilities where there is adverse environmental impact or an imminent and substantial danger	4
ii) Other site access violations	1, 3

NOTES:

- “Adverse Environmental Impact” includes, but is not limited to, fish kills, loss of drinking water supply, or loss of other beneficial uses. Any allegation of adverse environmental impact due to spills, bypasses, unpermitted discharges, and other violations of state law and regulations shall be reported to the enforcement staff with documentation that shall conclude that either there was a resulting adverse environmental impact or there was no adverse environmental impact.
- “Industrial Major Facility” - Facilities which have been defined as significant on the basis of permitted effluent characteristics and receiving stream quality and which are redefined yearly by agreement between the Board and EPA.
- “Industrial Minor Facility” - Facility not on EPA's list of Major Industrial facilities.

- “Municipal Major Facility” - Any municipal treatment facilities with flow equal to or greater than 1.0 MGD, and which are redefined yearly by agreement between the Board and EPA.
- “Municipal Minor Facility” - Any municipal treatment facility with flow less than 1.0 MGD.